

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

* * * *

CLARENCE WIMBLEY, d/b/a RIGHT
START LEARNING CENTER,

Petitioner/Appellant,

HON. WILLIAM C. MARIETTI

v.

Case No. 14-49606-AA

BUREAU OF CHILDREN AND
ADULT LICENSING,

Respondent/Appellee.

FREDRIC F. BALGOOYEN (P10386)
Attorney for Petitioner/Appellant

SCOTT R. SHIMKUS (P77546)
Assistant Attorney General
Attorney for Respondent/Appellee

* * * *

At a session of said Court held in the Hall of
Justice, in the city of Muskegon, county and
state aforesaid on the 18th day of March 2015.

PRESENT: HONORABLE WILLIAM C. MARIETTI
Circuit Judge

OPINION AND ORDER ON APPEAL

The Petitioner/Appellant operates a child care center that must be licensed. The Respondent/Appellee refused to renew the license based upon substantial and willful violation of rules promulgated pursuant to the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111, *et seq.* Following a hearing before an administrative law judge and review by the Director of the Department of Human Services, the refusal to renew was sustained. The Petitioner seeks review in this court. The review is an inquiry of whether the decision to deny renewal was arbitrary, capricious or a clear abuse

of discretion and was supported by competent, material and substantial evidence or is contrary to law. *Houghton – Portage Township Schools v Petrelius*, 281 Mich App 520; 761 NW2d 395 (2008).

A review of the record in this case indicates no material disputes of the fact that the Petitioner violated Child Care Organization Act's rules. Specifically, the Petitioner did not maintain the proper ratio of staff to children in violation of R 400.520a(2). This is a significant matter that directly involves the safety of the children entrusted to Petitioner's care. This violation was observed on July 9, 2013. The Petitioner had been advised of the proper staffing ratios on, at least, two prior occasions in May of 2012. Exhibit G. In addition, a copy of licensing statutes and rules are provided to the Petitioner when he applies for a license. Transcript (T) p 13. Thus, after receiving a copy of those materials and being advised on at least two occasions of the staffing ratios required therein, the Petitioner had reason to know that the conduct observed on July 9, 2013 was a violation. This constitutes a willful violation of a rule. R 400.16001(e). The reason the Petitioner was advised of the proper staffing ratios in May of 2012 is because there were two separate observations of insufficient staffing. Thus, the July 9, 2013 violation was a repeat of the conduct observed in 2012 and meets the definition of substantial noncompliance. R 400.16001(d). Having found a willful and substantial violation, the Respondent was authorized to refuse to renew the Petitioner's license. MCL 722.121(2).

The July 9 inspection also revealed the existence of safety hazards in the playground area in violation of R 400.5117. Exhibit B. The Petitioner admitted that these conditions existed. T p 128. One of the hazards observed on July 9 was the same that was cited following an inspection in the autumn of 2012. Exhibit C. Again,


there is a willful and substantial violation that involves the safety of the children. This also justifies a refusal to renew a license.

On July 9, children were left unsupervised in violation of R 400.5105.

Exhibit B. Petitioner acknowledged this. T p 132. Lack of supervision was observed also during the 2012 visit. This is yet another willful, substantial violation implicating child safety.

There were numerous other violations alleged regarding record keeping infractions. Suffice it to say, for the purpose of this review, the specific willful and substantial safety violations acknowledged, *supra*, dispel any claim that the refusal to renew was arbitrary, capricious, an abuse of discretion, not based upon competent, substantial and material evidence or contrary to law. The decision of the Respondent is **AFFIRMED.**

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'W. C. Marietti', written over a horizontal line.

Hon. William C. Marietti

STATE OF MICHIGAN
14TH JUDICIAL CIRCUIT

PARTY NOTIFICATION

CASE NO.
14-049606-AA

Court Address
MUSKEGON COUNTY
990 TERRACE STREET
MUSKEGON MI 49442

Court Telephone No.
231-724-3493

Mailing Date: 3/18/15

Mail To:

SCOTT ROBERT SHIMKUS
MICHIGAN DEPT OF ATTORNEY GENERAL
525 W OTTAWA ST
PO BOX 30758
LANSING MI 48909

Judge: WILLIAM C. MARIETTI

Plaintiff

CLARENCE WIMBLEY

V

Defendant

BUR OF CHILDREN & ADULT LIC

Enclosed you will find a copy of the Opinion and Order on Appeal which has been issued by the Court in this matter.

Health, Education &
Family Services Division

MAR 23 2015

Dept. of Attorney General
RECEIVED

THIS NOTICE HAS ALSO BEEN SENT TO:
FREDRIC F. BALGOOYEN